

§ 1955.54

servicing official is the Director, Business and Industry Division. For Non-profit National Corporations loans, the servicing official is Director, Community Facility Division. For all other types of loans, the servicing official is the District Director.

Suitable property. For FSA inventory property, real property that can be used for agricultural purposes, including those farm properties that may be used as a start up or add-on parcel of farmland. It also includes a residence or other off-farm site that could be used as a basis for a farming operation. For agencies other than FSA, real property that could be used to carry out the objectives of the Agency's loan program with financing provided through that program.

Surplus property. For FSA inventory property, real property that cannot be used for agricultural purposes including nonfarm properties. For other agencies, property that cannot be used to carry out the objectives of financing available through the applicable loan program.

[53 FR 35765, Sept. 14, 1988, as amended at 56 FR 29402, June 27, 1991; 57 FR 19525, 19528, May 7, 1992; 58 FR 58648, Nov. 3, 1993; 62 FR 44396, Aug. 21, 1997; 63 FR 41716, Aug. 5, 1998; 67 FR 78329, Dec. 24, 2002]

§ 1955.54 Redelegation of authority.

Authorities will be redelegated to the extent possible, consistent with program objectives and available resources.

(a) Any authority in this subpart which is specifically provided to the Administrator or to an Assistant Administrator may only be delegated to a State Director. The State Director cannot redelegate such authority.

(b) Except as provided in paragraph (a) of this section, the State Director may redelegate, in writing, any authority delegated to the State Director in this subpart, unless specifically excluded, to a Program Chief, Program Specialist, or Property Management Specialist on the State Office staff.

(c) The District Director may redelegate, in writing, any authority delegated to the District Director in this subpart to an Assistant District Director or District Loan Specialist. Authority of District Directors in this

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subpart applies to Area Loan Specialists in Alaska and the Director for the Western Pacific Territories.

(d) The County Supervisor may redelegate, in writing, any authority delegated to the County Supervisor in this subpart to an Assistant County Supervisor, GS-7 or above, who is determined by the County Supervisor to be qualified. Authority of County Supervisors in this subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, the Director for the Western Pacific Territories, and Area Supervisors in the Western Pacific Territories and American Samoa.

§ 1955.55 Taking abandoned real or chattel property into custody and related actions.

(a) *Determination of abandonment.* (Multi-family housing type loans will be handled in accordance with 7 CFR part 3560, subpart J.) When it appears a borrower has abandoned security property, the servicing official shall make a diligent attempt to locate the borrower to determine what the borrower's intentions are concerning the property. This includes making inquiries of neighbors, checking with the Postal Service, utility companies, employer(s), if known, and schools, if the borrower has children, to see if the borrower's whereabouts can be determined and an address obtained. A State supplement may be issued if necessary to further define "abandonment" based on State law. If the borrower is not occupying or is not in possession of the property but has it listed for sale with a real estate broker or has made other arrangements for its care or sale, it will not be considered abandoned so long as it is adequately secured and maintained. Except for borrowers with Farmers Program loans, if the borrower has made no effort to sell the property and can be located, an opportunity to voluntarily convey the property to the Government will be offered the borrower in accordance with § 1955.10 of Subpart A of this part. In farmer program cases, borrowers must receive Attachments 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter and any appeal must be concluded before any adverse action can be taken. The County Supervisor will send

these forms to the borrower's last known address as soon as it is determined that the borrower has abandoned security property.

(b) *Taking security property into FmHA or its successor agency under Public Law 103-354 custody.* When security property is determined to be abandoned, the running record in the borrower's file will be fully documented with the facts substantiating the determination of abandonment, and the servicing official shall proceed as follows without delay:

(1) For loans to individuals (except those with Farmer Program loans), if there are no prior liens, or if a prior lienholder will not take the measures necessary to protect the property, the County Supervisor shall take custody of the property, and a problem case report will be prepared recommending foreclosure in accordance with §1955.15 of Subpart A of this part, unless the borrower can be located and voluntary liquidation accomplished. Farmer Program loan borrowers will be sent the forms listed in paragraph (a) of this section and the provisions of §1965.26 of Subpart A of Part 1965 of this chapter will be followed.

(2) For MFH loans, if there are no prior liens, the District Director will immediately notify the State Director, who will request guidance from OGC and may also request advice from the National Office. The State Director, with the advice of OGC, will advise the borrower by writing a letter, certified mail, return receipt requested, at the address currently used by Finance Office, outlining proposed actions by FmHA or its successor agency under Public Law 103-354 to secure, maintain, and operate the project.

(i) If the unpaid loan balance plus recoverable costs do not exceed the State Director's loan approval authority, the State Director will authorize the District Director to take custody of the property, make emergency repairs if necessary to protect the Government's interest, and will advise how the property is to be managed in accordance with 7 CFR part 3560.

(ii) If the unpaid loan balance plus recoverable costs exceeds the State Director's loan approval authority, the State Director will refer the case to

the National Office for advice on emergency actions to be taken. The docket will be forwarded to the National Office with detailed recommendations for immediate review and authorization for further action, if requested by the MFH staff.

(iii) Costs incurred in connection with procurement of such things as management services will be handled in accordance with FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 office).

(iv) The District Director will prepare a problem case report to initiate foreclosure in accordance with §1955.15 of Subpart A of this part and submit the report to the State Director along with a proposed plan for managing the project while liquidation is pending.

(3) For organization loans other than MFH, if there are no prior liens, the District Director will immediately notify the State Director that the property has been abandoned and recommend action which should be taken to protect the Government's interest. After obtaining the advice of OGC and the appropriate staff in the National Office, the State Director may authorize the District Director to take custody of the property and give instructions for immediate actions to be taken as necessary. The District Director will prepare a Report on Servicing Action (Exhibit A of Subpart E of Part 1951 of this chapter) recommending that foreclosure be initiated in accordance with §1955.15 of Subpart A of this part and submit the report to the State Director, along with a proposed plan for management and/or operation of the project while liquidation is pending.

(c) *Protecting custodial property.* The FmHA or its successor agency under Public Law 103-354 official who takes custody of abandoned property shall take the actions necessary to secure, maintain, preserve, lease, manage, or operate the property.

(1) *Nonsecurity personal property on premises.* If a property has been abandoned by a borrower who left nonsecurity personal property on the premises, the personal property will not be removed and disposed of *before* the real

property is acquired by the Government. If the premises are in a condition which presents a fire, health or safety hazard, but also contains items of value, only the trash and debris presenting the hazard will be removed. The servicing official may request advice from the State Director as necessary. The servicing official shall check for liens on nonsecurity personal property left on abandoned premises. If there is a known lienholder(s), the lienholder(s) will be notified by certified mail, return receipt requested, that the borrower has abandoned the property and that FmHA or its successor agency under Public Law 103–354 has taken the real property into custody.

Actions by FmHA or its successor agency under Public Law 103–354 must not damage or jeopardize livestock, growing crops, stored agricultural products, or any other personal property which is not FmHA or its successor agency under Public Law 103–354 security.

(2) *Repairs to custodial property.* Repairs to custodial property will be limited to those which are essential to prevent further deterioration of the property. Expenditures in excess of an aggregate of \$1,000 per property must have prior approval of the state Director.

(d) *Emergency advances where liquidation is pending.* Although security property may not be defined as abandoned in accordance with paragraph (a) of this section, if the borrower is not occupying the property and refuses or is unable to protect the security property, the servicing official is authorized to make expenditures necessary to protect the Government's interest. This would include, but is not limited to, securing or winterizing the property or making emergency repairs to prevent deterioration. Expenditures will be handled in accordance with paragraph (e) of this section. Situations where this authority may be used include, but are not limited to, where a borrower has a sale pending or when a voluntary conveyance is in process.

(e) *Income and costs.* Income received from the property will be applied to the borrower's account as an extra payment. Expenditures will be charged to

the borrower's account as a recoverable cost.

(f) *Off-site procurements.* Circumstances may require off-site procurement action(s) to be taken by FmHA or its successor agency under Public Law 103–354 to protect custodial, security or inventory property from damage or destruction and/or protect the Government's investment in the property. Such procurements may include, but are not limited to construction or reconstruction of roads, sewers, drainage work or utility lines. This type work may be accomplished either through FmHA or its successor agency under Public Law 103–354 procurement or cooperative agreement. However, if FmHA or its successor agency under Public Law 103–354 is obtaining a service or product for itself only, it must be a procurement and any such actions will be in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office). Funding will come from the appropriate insurance fund.

(1) *Conditions for procurement.* Such expenditures may be made only when all of the following conditions are met:

(i) A determination is made that failure to procure work would likely result in a property loss greater than the expenditure;

(ii) There are no other feasible means (including cooperative agreements) to accomplish the same result;

(iii) The recovery of such advance(s) is not authorized by security instruments in the case of security or custodial property (no such limitation exists for inventory property);

(iv) Written documentation supporting subparagraphs (i), (ii) and (iii) has been obtained from the authorized program official;

(v) Approval has been obtained from the appropriate Assistant Administrator.

(2) *Direct procurement action.* Where direct procurement action is contemplated, an opinion must be obtained from the Regional Attorney that:

(i) FmHA or its successor agency under Public Law 103-354 has the authority to enter the off-site property to accomplish the contemplated work, or

(ii) A specific legal entity has authority to grant an easement (right-of-way) to FmHA or its successor agency under Public Law 103-354 for the contemplated work and such an easement, in a form approved by the Regional Attorney, has been obtained.

(3) *Cooperative agreements.* Cooperative agreements between FmHA or its successor agency under Public Law 103-354 and other entities may be made to accomplish the requirement where the principal purpose is to provide money, property, services or items of value to state or local governments or other recipients to accomplish a public purpose. Exhibit C of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office) is an example of a typical cooperative agreement. A USDA handbook providing detailed guidance for all parties is available from the USDA—Office of Operations and Finance. Although cooperative agreements are not a contracting action, the authority, responsibility and administration of these agreements will be handled consistent with contracting actions.

(4) *Consideration of maintenance agreements.* Maintenance requirements must be considered in evaluating the economic benefits of off-site procurements. Where feasible, arrangements or agreements should be made with state, local governments or other entities to ensure continued maintenance by dedication or acceptance, letter agreements, or other applicable statutes.

[53 FR 35765, Sept. 14, 1988, as amended at 54 FR 20521, May 12, 1989; 57 FR 36591, Aug. 14, 1992; 68 FR 61331, Oct. 28, 2003; 69 FR 69106, Nov. 26, 2004]

§ 1955.56 Real property located in Coastal Barrier Resources System (CBRS).

(a) *Approval official's scope of authority.* Any action that is not in conflict with the limitations in paragraphs (a)(1), (a)(2) or (a)(3) of this section shall not be undertaken until the approval official has consulted with the appropriate Regional Director of the U.S. Fish and Wildlife Service. The Re-

gional Director may or may not concur that the proposed action does or does not violate the provisions of the Coastal Barrier Resources Act (CBRA). Pursuant to the requirements of the CBRA, and except as specified in paragraphs (b) and (c) of this section, no maintenance or repair action may be taken for property located within a CBRS where:

(1) The action goes beyond maintenance, replacement-in-kind, reconstruction, or repair and would result in the expansion of any roads, structures or facilities. Water and waste disposal facilities as well as community facilities may be improved to the extent required to meet health and safety requirements but may not be improved or expanded to serve additional users, patients, or residents;

(2) The action is inconsistent with the purposes of the CBRA; or

(3) The property to be repaired or maintained was initially the subject of a financial transaction that violated the CBRA.

(b) *Administrator's review.* Any proposed maintenance or repair action that does not conform to the requirements of paragraph (a) of this section must be forwarded to the Administrator for review and approval. Approval will not be granted unless the Administrator determines, through consultation with the Department of the Interior, that the proposed action does not violate the provisions of the CBRA.

(c) *Emergency provisions.* In emergency situations to prevent imminent loss of life, imminent substantial damage to the inventory property or the disruption of utility service, the approval official may take whatever minimum steps are necessary to prevent such loss or damage without first consulting with the appropriate Regional Director of the U.S. Fish and Wildlife Service. However, the Regional Director must be immediately notified of any such emergency action.

§ 1955.57 Real property containing underground storage tanks.

Within 30 days of acquisition of real property into inventory, FmHA or its successor agency under Public Law 103-354 must report certain underground